

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JAMES GILLIAM, Individually And On Behalf Of
All Others Similarly Situated,

Plaintiff,

VS.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

Civil Action No. 04cv11600 (RGS)

BOGATIN FAMILY TRUST, Individually And On
Behalf Of All Others Similarly Situated,

Plaintiff,

VS.

Civil Action No. 04cv11642 (RGS)

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

CYNTHIA A. BENNETT and GUY E. MILLER,

Plaintiffs,

VS.

Civil Action No. 04cv11651 (RGS)

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

[Caption continues on next page]

THE *GILLIAM* PLAINTIFFS’
MOTION FOR LEAVE TO FILE MEMORANDUM OF LAW
IN FURTHER SUPPORT OF TRI-LEAD COUNSEL AND LIAISON COUNSEL AND
PLAINTIFFS’ MOTION FOR CONSOLIDATION

GHASSAN J. AWALI et al., Individually And On
Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

Civil Action No. 04cv11709 (RGS)

WILLIAM S. GROESCHEL, Individually And On
Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

Civil Action No. 04cv11735 (RGS)

NANCY HAUGEN, MICHAEL F. MAGNAN,
KAREN L. MAGNAN, ROSE M. IANNACCONE,
PRESLEY C. PHILLIPS, ANDREA M. PHILLIPS,
and CINDY SCHURGIN, for the use and benefit of
FIDELITY MAGELLAN AND FIDELITY
CONTRAFUND,

Plaintiffs,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

Civil Action No. 04cv11756 (MLW)

[Caption continues on next page]

DAVID O. FALLERT, Individually And On Behalf
Of All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT AND RESEARCH
COMPANY, et al.,

Defendants.

Civil Action No. 04cv11812 (RGS)

Plaintiffs James Gilliam, Bogatin Family Trust, William S. Groeschel, Ghassan J. Awali, Marina Berti, Valerie x A. Daspit, Arthur G. Denker, Randall C. Heyward, Stanley H. Krupa, Nicole Lenzi, David M. Lucoff, Joseph F. Martingano, Michael S. Mendolia, Patricia K. Munshaw, Brian D. Reese, Jay J. Rupp, Gilbert P. Travis, Jewel R. Travis and David O. Fallert (“Plaintiffs”), by their counsel, hereby move this Court, should the Court deem it necessary, for leave to file the Memorandum of Law in Further Support of Plaintiffs’ Motion for Appointment of Tri-Lead Counsel and Liaison Counsel and Plaintiffs’ Motion for Consolidation (“the Memorandum”) previously filed in all seven of the above-entitled actions on December 2, 2004 [Gilliam Docket No. 66], prior to the status conference before Chief Magistrate Bowler held on December 3, 2004. As grounds therefore, Plaintiffs state that on November 17, 2004, Plaintiffs filed in all of the above actions a Notice of Pending Motions in Related Cases: Plaintiffs’ Motion for Appointment of Tri-Lead counsel and Appointment of Liaison counsel and Motion for Consolidation of Cases. Opposing plaintiffs’ counsel and various defendants responded

with filings entitled “Response” or “Letter/request” without Motions for Leave to File, and Plaintiffs therefore also filed their Memorandum without a Motion for Leave to File.¹

If the Court deems the Memorandum to have been improperly filed, Plaintiffs now apologize and seek such leave to file and state that the matters contained in the Memorandum are extremely useful to the Court in adjudicating the pending motions.

December 15, 2004

Respectfully submitted,

MOULTON & GANS, P.C.

By: /s/ Nancy Freeman Gans
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Mendolia, Patricia K. Munshaw, Brian D.
Reese, Jay J. Rupp, Gilbert P. Travis, Jewel
R. Travis and David O. Fallert and
Proposed Liaison Counsel***

¹ *Gilliam* Plaintiffs’ counsel today received a telephone call for a Local Rule 7.1 conference from Ms. Michelle Blauner, Esquire, counsel for the Haugen Plaintiffs, stating that, despite their failure to object at the status conference, the Haugen Plaintiffs plan to file today a Motion to Strike the Memorandum because of Plaintiffs’ failure to file a motion for leave to file. Plaintiffs are, however, wary of starting another briefing cycle on motions that have already been fully briefed. Accordingly, *Gilliam* Plaintiffs hereby request the Court’s permission to file the Memorandum.

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LOCAL RULE 7.1(A)(2) CERTIFICATE

I, Nancy Freeman Gans, hereby certify that on December 15, 2004, I spoke by telephone with the following counsel regarding The Gilliam Plaintiffs' above Motion for Leave to File Memorandum of Law: (1) Michelle H. Blauner, Esquire, Shapiro Haber & Urmy, counsel for the Haugen plaintiffs, who opposes the motion; (2) Harry S. Miller, Esquire, Perkins, Smith & Cohen, counsel for the Bennett plaintiffs, who opposes the motion. I have notified by voice mail: Wm. Shaw McDermott, Esquire, Kirkpatrick & Lockhart, counsel for the Fidelity Funds; John Kiernan, Esquire, Debevoise & Plympton, counsel for the Individual Defendants in the Gilliam, Bogatin Family Trust, Awali, Groeschel and Fallert cases; and James W. Benedict, Esquire, Milbank, Tweed, Hadley & McCloy, LLP, counsel for Fidelity Management and Research Company and FMR Co., Inc., of the filing of this Motion, but also have not been able to reach them.

/s/ Nancy Freeman Gans
Nancy Freeman Gans

CERTIFICATE OF SERVICE

I, Daniel P. Dietrich, hereby certify that I served a copy of the foregoing document upon counsel for all parties by e-mail and/or telefax, to each attorney of record, this 15th day of December, 2004.

/s/ Daniel P. Dietrich
Daniel P. Dietrich